

Nos. 22-13051, 22-13052, 22-13118 & 22-13120

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**United States Court of Appeals for the Eleventh Circuit**

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IN RE BLUE CROSS BLUE SHIELD ANTITRUST LITIGATION  
(MDL 2406)

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On Appeal from the U.S. District Court  
for the Northern District of Alabama, Southern Division  
No. 2:13-cv-20000-RDP

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**DEFENDANT-APPELLEE'S UNOPPOSED MOTION FOR  
EXTENSION OF TIME**

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**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1, the undersigned counsel for Defendant-Appellee Blue Cross Blue Shield Association (“BCBSA”) (a private, non-governmental party) certifies that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

The undersigned counsel for Defendant-Appellee BCBSA further certifies that the list of those interested in the outcome of this appeal in *The Home Depot Appellants’ Brief* is complete.

## **DEFENDANT-APPELLEE'S MOTION FOR EXTENSION OF TIME**

Defendant-Appellee Blue Cross Blue Shield Association (“BCBSA”), through its undersigned counsel and on behalf of all Defendants-Appellees, submits this unopposed motion for a 30-day extension of the time to file Appellees’ responsive briefs to February 10, 2023.

### **I. Relevant Procedural Background.**

On October 5, 2022, Plaintiffs-Appellees moved to consolidate and to expedite the pending appeals, Nos. 22-13051, 22-13052, 22-13118, and 22-13120. Defendants-Appellees agreed that the appeals should be consolidated, but opposed Plaintiffs-Appellees’ request to expedite. (Defendant-Appellees’ Response to Plaintiffs-Appellees’ Motion To Consolidate and To Expedite Appeals (October 14, 2022).) While Defendants-Appellees did not (and do not) object to an expedited hearing and decision in these Appeals, they respectfully submitted that “the standard briefing schedule set out in the Eleventh Circuit Rules should apply.” (*Id.* at 2.) Appellants likewise argued that expedited briefing was not appropriate here in light of the important issues raised by these Appeals. (The Home Depot Appellants’ Response to Motion To Consolidate and To Expedite

Appeals (October 12, 2022); Appellants' Opposition to Motion To Consolidate and To Expedite Appeals (October 12, 2022); Appellant's Response in Opposition to Plaintiffs-Appellees' Motion To Consolidate and Expedite Appeals (October 16, 2022).)

On November 2, 2022, the Court denied as moot Plaintiffs-Appellees' motion to consolidate and granted in part their motion to expedite. (November 2, 2022 Order at 1.) Though the Court expedited the appeal for merits disposition purposes, the Court ordered that "[t]his appeal shall follow the standard briefing schedule set forth by this Court's rules." (*Id.*) Thereafter, Appellants filed and served their opening briefs on December 12, 2022, and Appellees' responsive briefs are currently due on January 11, 2023.

Defendants-Appellees contacted the Clerk by phone to request a 30-day extension of the time to file Appellees' responsive briefs to February 10, 2023, pursuant to 11th Cir. R. 31-2(a). The Clerk informed Defendants-Appellees that, due to Plaintiffs-Appellees' motion to expedite, the Clerk is not able to act upon Defendants-Appellees' extension request and that Defendants-Appellees must move the Court for the extension

they seek. Accordingly, Defendants-Appellees submit this motion for extension of time to file Appellees' responsive briefs pursuant to 11th Cir. R. 31-2(a) and 26-1. Defendants-Appellees have conferred with Appellants and Plaintiffs-Appellees, who do not oppose Defendants-Appellees' request.<sup>1</sup> This is Defendants-Appellees' first request for an extension.

## **II. Good Cause Exists for Defendants-Appellees' Requested Extension.**

The Court's rules permit an extension of time to file a brief for good cause shown. (11th Cir. R. 31-2(a); 11th Cir. R. 26-1; November 2, 2022 Order at 1.) Good cause for Defendants-Appellees' requested extension exists because these Appeals address important issues that are significant to the Settlement and to the peace Defendants obtained in the Settlement—including, for example, the permissible scope of the Settlement release. The District Court "carefully consider[ed]" the Settlement and the objections to the Settlement for more than a year. *See* Doc. 2931 at 45. Defendants-Appellees seek additional time in order to give these important issues the careful consideration they deserve. In addition,

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<sup>1</sup> Pro se Appellant David Behenna reviewed this motion prior to filing and stated that he could not say one way or the other whether he objects to the requested extension.

good cause exists for the requested extension in order to allow time for the 34 Defendants-Appellees to coordinate amongst themselves on a single responsive filing, as well as to allow for the necessary coordination among all Settlement proponents (including Plaintiffs-Appellees), especially in light of the upcoming holiday season. An extension will not prejudice any of the parties to this appeal, and none opposes this request.

### **III. Conclusion**

For the foregoing reasons, Defendant-Appellee BCBSA respectfully requests that the Court extend the time to file Appellees' responsive briefs to February 10, 2023.

Dated: December 21, 2022

Respectfully submitted,

/s/ Karin A. DeMasi

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## **CERTIFICATE OF COMPLIANCE**

This brief complies with the word limit of Fed. R. App. P. 27 because it contains 618 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's typeface and type styles comply with Fed. R. App. P. 32(a)(5) and (6).

Dated: December 21, 2022

/s/ Karin A. DeMasi

Karin A. DeMasi

### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on December 21, 2022. For Objector-Appellants and Plaintiff-Appellees who are registered CM/ECF users, service will be accomplished by the appellate CM/ECF system.

/s/ Karin A. DeMasi

Karin A. DeMasi